

# State of New Hampshire



## PERSONNEL APPEALS BOARD

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### DECISION OF THE PERSONNEL APPEALS BOARD

**THOMAS OWENS**

**V.**

**N.H. DEPARTMENT OF SAFETY  
DIVISION OF STATE POLICE  
DOCKET # 2020-T-002**

**APPEARANCES:** Attorneys Marc Beaudoin and John Krupski represented the Appellant.

Attorney David Hilts represented the NH Department of Safety.

**WITNESSES:** Sergeant Owen Malilay – Supervisor of Troop D.

Lieutenant John Mullen – Professional Standards Unit.

Colonel Christopher Wagner (ret.)

Trooper Thomas Owens – Appellant.

**ISSUES OF LAW:** Per 1002.08 – Dismissal:

(b)(10) – Obstructing an internal investigation.

(b)(12) – Falsification of agency records.

(b)(7) - Violation of a published agency policy.

Professional Standards of Conduct – Chapter 1:

Section 1.3.0 – Obedience.

Section 2.4.0 – Obligations – Division Reports.

Section 1.4.8 – Integrity.

Section 1.13.0 – Discipline.

Professional Standards of Conduct – Chapter 22-E

Section 1.2.A – Procedures.

Section 1.5.D – Performance.

**APPEAL HEARING:** The board held an in-person and recorded hearing at the offices of the PUC on S. Fruit Street in Concord, NH on March 18, 2020.

**APPEAL TRIBUNAL:** Three commissioners sat for the hearing and constituted the required quorum: Commissioner Gail Wilson, Commissioner Marilee Nihan, and Attorney Norman Patenaude as presiding officer.

### **BACKGROUND**

The N.H. Department of Safety, Division of State Police dismissed Trooper Owens on the grounds that on October 30, 2018 he travelled to an extra-duty detail during regular duty time, that he wore the improper uniform during the detail, that he intentionally provided inaccurate information on his timecard related to the time he started his duty shift and that he gave untruthful information to his supervisor about it, all in violation of the Professional Standards of Conduct ("PSC") relative to extra duty detail, obligations, proper reporting, obedience, insubordination and integrity. The Appellant disputed the factual findings and disagreed with the administrative conclusions that served as the basis for his dismissal. This appeal followed.

### **FINDINGS OF FACT**

The Appellant was hired as a probationary trooper on April 15, 2016 at age 22 while in his senior year of college and was promoted to the rank of Trooper 1 on April 15, 2017. He worked the midnight highway patrol shift on which there are two supervisors. The troopers work for six consecutive days then they have three days off and the shift lasts 8.5 hours. Between regular duty and special details they may not work more than 16 hours in a 24-hour period or work over 160 hours during any 28-day so-called Garcia period so they must take a 7-hour work day during the 28-day period with the consent of the shift supervisor. Deviations from these time limitations would appear in the Lawson payroll timekeeping system.

On October 30, 2018 the Appellant was scheduled for annual firearms recertification at the State Police range in New Hampton, NH. He intended to officially be on duty for a regular 8.5-hour training day although training usually ends by noon and the troopers are then free to leave for the day. He signed in at 07:24 hours. The day before, October 29, 2018, he accepted a short extra duty escort detail assignment from Salem, NH to Derry, NH that was scheduled to begin at 15:00 hours believing that the detail work was to be performed later that same day. He later realized that the detail was actually scheduled for the following day, October 30, 2018, the same day as the firearms training. Since firearms training usually ends around noon the Appellant believed that he would have plenty of time to travel back home and work the detail at 15:00.

After he completed the firearms training at about 12:30 hours, the Appellant travelled south for about an hour to his residence in Hooksett, N.H. to conduct the required firearms maintenance. He was home for about an hour and then he went to work the detail. He switched from the Troop D district to the Troop B district at 14:14 hours. He went straight to the detail wearing the same BDU uniform. The detail began at 14:53 hours and ended at 15:24 hours for a total of 31 minutes. He completed the detail voucher that day.

On the Lawson timecard at the end of the week the Appellant entered 07:00 as his starting time when he should have entered 07:30. He realized that he had to take the mandatory monthly 7-hour workday which would extend to 14:30 hours and prevent him from going over the 16-hour limit for any one duty day and allow him to work the detail to which he was already committed later in the day. Sgt. Grieco and Sgt. Malilay met with the Appellant on November 3, 2018 to reconcile the timecard with the detail voucher. Sgt. Grieco conducted a formal recorded second interview on November 20, 2018. Sgt. Malilay acknowledged that balancing work, details and court appearances can be challenging and that there existed no formal policy for requesting leave as it was left to each trooper's discretion. He also confirmed that firearms training normally lasts only half a day.

There was a third administrative interview conducted on March 15, 2019 in the presence of Lt. Commerford and Lt. Mullen who testified that troopers should complete their time cards on a daily basis because otherwise it's difficult to recollect a week's worth of duty shifts and detail assignments. The Appellant explained that he hit the wrong button and that the timecard essentially self-populated itself based upon historical information. When he entered 07:00 the timecard provided a list of previous times for which he had entered 07:00 and he mistakenly selected 13:00 as the ending time. The Appellant was not aware of the fact that the timecard machine had this populating function but Lt. Comerford confirmed that it did. The Appellant explained that the selection of 13:00 as the end of his shift was an error on his part and Lt. Mullen accepted the entry of 13:00 hours as a mistake. The Appellant typically completed his timecard at the end of the work week instead of completing it on a daily basis. The Appellant entered 07:00 so he could work a 7-hour day and still complete the afternoon detail without the risk of traveling to the detail on regular duty time. According to the recorded interview, the Appellant did not recall when he actually signed in on the morning of October 30, 2018 and nor did he look at the timestamp from the CAD but the timecard machine indicated that it was at 07:24 which normally would be rounded off to 07:30. The Appellant first realized that there was an issue with his hours after he completed the detail and worked on his timecard submission at the end of the week. He did not anticipate having an issue with his timecard when he signed up for the detail. The Appellant acknowledged that he should have paid closer attention to the times and events in question and that he should have called the problem with his work hours on that day to a superior but he hesitated to do so because of similar poor record keeping incidents in the past.

When the Appellant looked at his timecard he realized that he would likely exceed the limit on hours worked in a 24-hour period so he decided on his own to take a 7-hour day that would run from 07:00 to 14:00 so he could still work the detail at 15:00 in the afternoon. He explained that he was trying to cram too many things in his schedule without paying attention to the details. According to the CAD, the Appellant left his residence at 14:14 and ended his duty shift without communicating that 10-2 status to the dispatch center. The Appellant accepted responsibility for not paying close attention to the inaccurate entries and denied any intentional wrongdoing. He was just trying to clean up the mess that he created by adjusting the duty times to fit with the detail time. According to the recorded interview, the Appellant had no intention of hiding anything from anyone. He adjusted the detail slip to accord with the

entries on his timecard to “make the hours work” so the 07:00 entry was purposely entered. He did not work more than seven hours that day.

There was a fourth interview with Lt. Mullen on April 24, 2019 to follow up on selected points. The CAD records confirmed that the Appellant self-dispatched himself off duty on October 30, 2018 at 14:14. He again also acknowledged that he intentionally entered his start time as 07:00 on that morning knowing that it was not correct. He acknowledged that he poorly planned and managed his duty times and details and that he had no intent to deceive anyone when he entered 07:00 in lieu of 07:30. He was paid for 7 hours of duty time on that day from 07:30 to 14:30. He started to drive to the detail at 14:14. The detail started 23 minutes later at 14:53 so there was an overlap of 16 minutes during which he travelled on regular duty time on his way to the detail all while still wearing the BDU Class E patrol uniform. All agreed on what happened but disagreed on how it happened. The interviewers concluded that the Appellant violated several provisions of the PSC and forwarded their findings and conclusions to the Colonel Wagner.

On August 23, 2019 Colonel Wagner held a pre-termination notice meeting with the Appellant and on August 26, 2019 Colonel Wagner gave the Appellant a notice of dismissal that summarized the facts and administrative policy violations recited in the investigative reports. In his opinion, the Appellant tried to cover his mistakes on his own whereas a supervisor could have corrected the inconsistencies in the entries by approving two hours of leave time.

In its closing summation, the State argued that the Appellant got himself into a jam and had to adjust his hours for the week in question in order to avoid exceeding the 16-hour limit in a 24-hour period and the 160-hour limit in a 28-day period so he changed the detail voucher but omitted to change the 14:30 end of duty time for the same day. He didn’t consult with his sergeant because he had been admonished for making similar errors twice before and he was risking being cited for a policy violation. The State argued that he altered the records to avoid a policy violation and that this gave rise to the integrity allegation and the loss of trust on the part of his superiors. The State asked the Board to uphold its disciplinary action.

On the other hand, the Appellant argued that the State was making a mountain out of a molehill and that minor inconsistent administrative data entries were not tantamount to lies. He admitted that he strived to avoid a policy violation and to comply with the payroll parameters by taking a 7-hour day and that he was careless with his record keeping. He recited the same consistent story during four interviews over the course of five months. He never intended to deceive anyone and argued that his errors and omissions did not rise to the level of termination. He asked the Board to overturn that action and to reinstate him to his former position.

### **CONCLUSIONS OF LAW**

The Board concludes that the Appellant carried his burden of proof and established by a preponderance of the evidence that his dismissal was unwarranted by the alleged conduct and unjust in light of the facts in evidence. Per-A 207:12 (b) (3) and (4). The Board reached this conclusion in reliance upon the following facts.

The witnesses described the Appellant as a good trooper and his record is devoid of any prior discipline. The State hired him as soon as he graduated from a college-level criminal justice program in 2016.

On Monday, October 29, 2018, the Appellant accepted a highway escort detail with a starting time of 15:00 without paying attention to the date. He initially believed was for later that day. When he reread the page message later in the day, he realized that the detail was scheduled for 15:00 the following day, October 30, 2018. He was already scheduled for firearms training on October 30, 2018 and a normal duty day lasts 8.5 hours but firearms training usually lasts only half a day and the troopers are free to do as they please for the rest of the duty shift although they are paid for travel time and for time spent cleaning the weapons they use at the range. The Appellant decided on his own to use a 7-hour day that day with the intent to avoid an overlap between the duty time and the detail time.

The weapons proficiency training ended at 12:30. The Appellant travelled one hour from the range in New Hampton, NH to his residence in Hooksett, N.H. He spent less than one hour at home cleaning his weapon before leaving at 14:14 to go work on the detail and did not change his uniform contrary to policy. The detail was scheduled to begin at 15:00. He completed the detail voucher that day.

When the Appellant completed his time card for regular duty at the end of the week he realized that, between the regular duty hours and the detail hours, he would exceed the limitation on hours worked in a 24-hour period and in a 28-day period. He was looking at a policy violation unless he adjusted the timecard.

Without taking the time to consider the consequences or how the adjustments might appear to his superiors, the Appellant on his own decided to use a 7-hour day for October 30, 2018 to avoid an overlap between regular duty time and detail time. He also entered 07:00 on his timecard for that day so that the 7-hour day for which he was to be paid would end at 14:00. He actually clocked in at 07:24 which was rounded to 07:30 for payroll purposes and that extended his regular duty day to 14:30 or 30 minutes before the starting time of the detail at the state line in Salem, NH. The Appellant admitted that he entered 07:00 as the start time to make the afternoon schedule work. He left his residence at 14:14 and travelled for 16 minutes to the detail on regular duty time. Additionally, the Appellant wore his BDU uniform while on the detail.

The adjustments to the Appellant's timecard caught the attention of his superiors. He admitted that he entered 07:00 as his starting time for October 30, 2018 and acknowledged that it was challenging for him to balance regular duty, court appearances, details and home activities and that time management was a problem for him. He recited the same consistent story during the four interviews held over a 5-month period and should have heeded the advice of the interviewers to complete the timecard daily instead of weekly to avoid the situation that he got himself into.

During all the questioning by the interviewers the Appellant consistently admitted that he paid little attention to detail and that he adjusted the hours for October 30, 2018 to avoid a policy

violation. He also consistently denied that he ever harbored any intention of hiding any information from anyone. He accepted full responsibility for his actions.

The Board found the Appellant to be credible and concluded that he exercised poor judgment in an attempt to juggle regular duty shifts and details and to keep the combined hours within the payroll guidelines. This case serves as an example of inattention to detail and poor time management, but these deficiencies do not rise to the level of a termination. The errors and omissions including failing to communicate this problem to his superiors in a timely manner, poor record keeping and travelling 16 minutes on state time on the way to a detail wearing the wrong uniform constitute policy violations and warrant a suspension of 20 days without pay. In addition, the Board recommends to the State that it not offer him any details for 60 days.

### DECISION

Based on the evidence of record the Board under the authority of RSA 21-I:58, I:

1. Overturns the disciplinary dismissal and reinstates the Appellant effective August 26, 2019,
2. Substitutes a suspension of 20 days without pay effective August 26, 2019, and
3. Recommends that the State not consider the Appellant eligible to work on details for the first 60 calendar days following his return to duty.

This is a unanimous decision.



Gail Wilson, Commissioner



Marilee Nihan, Commissioner



Norman J. Patenaude, Esq.  
Vice-Chair

May 6, 2020

cc: Attorney John Krupski, 109 North State Street, Suite 9, Concord, NH 03301  
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